

## Federal Communications Commission

DA 97-2270

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of Section 73.202(b)	)	MM Docket No. 97- 227
Table of Allotments,	)	RM-9159
FM Broadcast Stations.	)	
(Wasilla, Alaska)	)	

## NOTICE OF PROPOSED RULE MAKING

Adopted: October 22, 1997

Released: October 31, 1997

Comment Date: December 22, 1997

Reply Comment Date: January 6, 1998

By the Chief, Allocations Branch:

1. The Commission considers herein the petition for rule making filed on behalf of KMBQ Corporation ("petitioner") requesting the allotment of Channel 273C2 to Wasilla, Alaska, as that community's second local FM transmission service.<sup>1</sup> Petitioner stated its intention to apply for Channel 273C2 if it is allotted to Wasilla, as requested.

2. Petitioner provided demographic information regarding Wasilla. Further, in support of the proposal, petitioner advises that Wasilla (population 4,048),<sup>2</sup> an incorporated community, is the largest locale in the Matanuska-Susitna Borough, an area comprising 24,694 square miles in which 50,759 people reside,<sup>3</sup> and which petitioner advises, is also the fastest growing area in the State of Alaska. Additionally, petitioner reports that Wasilla is the headquarters for the famous Iditarod dog sled event which commences its 1,000 mile trip at that community. In light of the petitioner's stated interest in providing a second local FM service to Wasilla, we will propose to allot Channel 273C2 to that community, as requested.

3. A staff review of the proposal reveals that Channel 273C2 can be allotted to Wasilla, Alaska, in conformity with the minimum distance separation requirements of Section 73.207(b)(1) of the Commission's Rules, provided the transmitter therefor is located at least 5.3 kilometers (3.3

<sup>1</sup>Petitioner advises that it is the licensee of Station KMBQ(FM), Channel 259C1, Wasilla.

<sup>2</sup>Population figure was obtained from the 1990 U.S. Census.

<sup>3</sup>Petitioner advises that its statistical enumeration of the Matanuska-Susitna Borough is based upon a 1996 certified report of the State of Alaska Department of Community and Regional Affairs.

miles) north, utilizing in this instance coordinates at 61-37-32 and 149-24-05.<sup>4,5</sup>

4. Based upon the interest expressed in providing an additional local FM service to Wasilla, Alaska, we will propose to allot Channel 273C2 to that community. Therefore, we will seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to Wasilla, Alaska, as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Wasilla, Alaska	259C1	259C1, 273C2

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before December 22, 1997, and reply comments on or before January 6, 1998, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

John Wells King, Esq.  
Amelia Brown, Esq.  
Haley, Bader & Potts  
4350 North Fairfax Drive  
Suite 900  
Arlington, VA 22203-1633.

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Sections 603

<sup>4</sup>The site restriction is required to avoid short spacings to the licensed sites of Anchorage, Alaska, Stations KKRO(FM), Channel 271C3, at coordinates 61-09-58 and 149-49-34, and KMXS(FM), Channel 276C2, at coordinates 61-08-13 and 149-50-06.

<sup>5</sup>Petitioner proposed a transmitter site located 5.9 kilometers (3.7 miles) north of Wasilla, utilizing the current transmitter site for its Station KMBQ(FM) at coordinates 61-38-03 and 149-26-25. However, in determining compliance with Section 73.207(b) of the Commission's Rules, if a new proposed allotment requires a site restriction, the Commission will endeavor to impose that which is the least restrictive theoretical site from the intended community of license. *See Vacaville, California*, 4 FCC Rcd 8315 (1989), *recon. denied*, 6 FCC Rcd 143 (1991). It is not until the application stage that the actual availability of a particular site must be demonstrated. *See West Palm Beach, Florida*, 3 FCC Rcd 5810 (1988).

and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

#### FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

Attachment: Appendix

### APPENDIX

1. Pursuant to authority contained in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Center (Room 239), at its headquarters, 1919 M Street, N.W., Washington, D.C.